

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

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Gotham Technology Group, LLC

In re:

BED BATH & BEYOND INC., et al.

Debtors.

Chapter 11

Case No. 23-13359 (VFP)

Hearing Date: July 11, 2023

**CERTIFICATION OF KENNETH W. PHELAN IN SUPPORT OF THE MOTION OF
GOTHAM TECHNOLOGY GROUP, LLC**

I, KENNETH W. PHELAN, hereby declare as follows:

1. I am the Chief Technology Officer within creditor Gotham Technology Group, LLC (“Gotham”). I have been employed with Gotham for over 20 years. As such, I am familiar with the facts and circumstances contained within this Certification, which I submit in support of Gotham’s Motion (I) to set the Debtor’s deadline to assume or reject executory contract, (II) to compel payment of related cure costs or administrative claims, or, in the alternative, (III) for relief from the automatic stay.

2. Gotham’s business providing hardware and software support subscription services for various network products. One such product is the Palo Alto Networks, Inc. (“Palo Alto”) Instant-On Network (ION) 3000, which is a network solution that transfers legacy wide area networks (WANs), enabling the user to combine underlying data transports into a unified hybrid

WAN. In essence, the ION 3000 is a high-performing network device that provides critical infrastructure capabilities to a business's network.

3. In August 2020, Gotham issued a proposal and quotation to the Debtor for hardware, installation, deployment support, data retention, firewall and wide area network subscription services for the ION 3000 system for a term of three years, broken down into three, one-year intervals.

4. On or about September 1, 2020, the Debtor accepted the Gotham proposal and issued three purchase orders to Gotham (the "Gotham Contract"). In conjunction with the acceptance of the Gotham proposal, in around September 2020, the Debtor also entered into an End User Agreement/Maintenance Agreement with Palo Alto relating to products including, but not limited to, software-as-a-service, cloud-delivered security services, hardware, and software (including the ION 3000).

5. Attached hereto as **Exhibit A** is a true copy of Purchase Order 287514, which covered initial hardware costs and year one of the hardware support and data, firewall and software license subscription agreements and totaled \$1,856,567.62 ("Year 1 PO"). A corresponding invoice was issued for the Year 1 PO. The Debtor timely paid the invoice relating to the Year 1 PO.

6. Attached hereto as **Exhibit B** is a true copy of Purchase Order 287515, which covered year two of the hardware support and data, firewall and software license subscription agreements and totaled \$956,674.69 ("Year 2 PO"). A corresponding invoice was issued for the Year 2 PO. The Debtor timely paid the invoice relating to the Year 2 PO.

7. Attached hereto as **Exhibit C** is a true copy of Purchase Order 287508, which covered year three of the hardware support and data, firewall and software license subscription agreements and totaled \$956,674.69 (“Year 3 PO”).

8. A corresponding invoice was issued for the Year 3 PO – Invoice GTGQ27250 (“Year 3 Invoice”), a true copy of which is attached hereto as **Exhibit D**.

9. The Debtor has failed to timely pay the Year 3 Invoice.

10. Attached hereto as **Exhibit E** is a true copy of the February 28, 2023 demand letter sent by counsel for Gotham to the Debtor.

11. Gotham and the Debtor thereafter engaged in negotiations to amend the Gotham Contract.

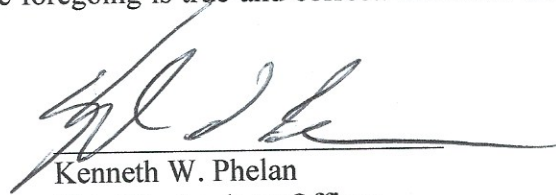
12. Attached hereto as **Exhibit F** is a true copy of the March 13, 2013 Letter Agreement Regarding Invoice GTGQ27250 entered into between Gotham and the Debtor, which amended the Gotham Contract (the “Letter Agreement”).

13. The Debtor attempted to make the final \$150,000 installment due April 14, 2023 (the “Final Payment”), but the Debtor’s check was returned unpaid.

14. To date, the Debtor has failed to make the Final Payment.

15. Upon information and belief, the Debtor continues to utilize the ION 3000 hardware and data, firewall and subscription services under the Gotham Contract.

I certify under penalty of perjury that the foregoing is true and correct. Executed on June
20, 2023.

A handwritten signature in black ink, appearing to read 'K. Phelan', is written over a horizontal line.

Kenneth W. Phelan
Chief Technology Officer
Gotham Technology Group, LLC